

Cite as 2010 Ark. App. 398

ARKANSAS COURT OF APPEALS

No. CA09-973

THURSTLE MULLEN,

APPELLANT

V.

MIKE TAYLOR and KRISTEN
TAYLOR,

APPELLEES

Opinion Delivered 5 MAY 2010APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CV-2005-496 (I)]THE HONORABLE GARY
COTTRELL, JUDGETHE HONORABLE MICHAEL
MEDLOCK, JUDGE

DISMISSED WITHOUT PREJUDICE

PER CURIAM

This quiet-title action grew into a thicket of claims and parties. Mike and Kristen Taylor purchased a 146.01 acre tract of land at a tax sale in the spring of 1998. They paid \$37,000.00 and the property's back taxes. This Crawford County land was previously owned by William E. Robinson—who lost ownership through a tax forfeiture. Ark. Code Ann. §§ 26-37-201–214 (Repl. 1997 & Supp. 2009). The Taylors bid the highest at the tax sale; the Commissioner of State Lands issued them a limited warranty deed. The Taylors eventually built their home on the tract.

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In the summer of 2005, J. Michael Enterprises, Inc. (JME) and Thurstle Mullen recorded two quitclaim deeds, one from Robinson and Kathy Price, and another from Robinson and Linda Lyon. These deeds conveyed all of their interests in the tract to JME and Mullen. Robinson and Lyon also signed an affidavit referring to \$33,300.00 “held by the Arkansas State Land Commission,” reportedly available to them. Supposedly JME and Mullen offered to claim this money on behalf of Robinson, Price, and Lyon. *See* Ark. Code Ann. § 26-37-205(b)(2) (Supp. 2009). A few months after the deeds were recorded, the Taylors sued JME and Mullen to quiet title to the property. JME and Mullen resisted, claiming they were the true owners. Then things got procedurally complicated.

The best way to explain this case’s complicated procedural history is with a timeline listing the key pleadings and other papers. No party defaulted, so we omit answers and the like. There were multiple motions, including several for summary judgment. We omit all motions except those granted by the circuit court.

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| October 2005 | — | Taylors sued JME and Mullen seeking to quiet title, alleging slander of title and adverse possession, and seeking compensation for their improvements to the land if they were not the owners. |
| November 2005 | — | JME and Mullen counterclaimed to quiet title in themselves and sought an injunction to stop any improvements to the land. They also filed |

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a third-party complaint against Mark Wilcox, Commissioner of State Lands, and Dianna Gentry, Crawford County Collector, seeking to invalidate the tax sale.

- December 2006 — JME and Mullen amended their counterclaim and third party complaint by alleging that Wilcox owed the Taylors for the value of their improvements. JME and Mullen also sought an easement over the Taylors' adjacent property.
- January 2007 — JME and Mullen filed a second amended counterclaim and third party complaint, expanding their claims against Wilcox and Gentry related to the tax sale. JME and Mullen also added allegations that Wilcox's actions were "illegal, unconstitutional, ultra vires, in bad faith and arbitrary."
- June 2008 — JME and Mullen amended their answer to include constitutional challenges to the tax sale.
- September 2008 — Taylors moved for summary judgment, relying on a recently decided case. *J. Michael Enterprises, Inc. v. Oliver*, 101 Ark. App. 48, 270 S.W.3d 388 (2007).
- October 2008 — Taylors amended their motion for summary judgment to seek judgment against JME as a matter of law because the corporation was no longer represented by a lawyer.
- October 2008 — Acting pro se, Mullen responded individually to the summary judgment motion. No

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response from JME.

- March 2009 — Mullen filed a third amended counterclaim and third-party complaint. He expanded claims against the Taylors, Wilcox, and Gentry, and added purported “fourth party defendants” Robinson, Price, and Lyon, alleging malicious prosecution, conspiracy to defraud, breach of contract, defamation, slander, and libel. Mullen also claimed Wilcox and the Taylors engaged in a conspiracy to “maliciously prosecute, defraud, defame, blackmail, and intimidate” him.
- March 2009 — Circuit court granted Taylors’ motion for summary judgment, quieted title in them, and dismissed Mullen’s “counterclaim.” The court declared Mullen’s two quitclaim deeds void and awarded \$5,000.00 in punitive damages and \$10,000.00 in attorney’s fees.
- April 2009 — Mullen timely moved to set aside summary judgment.
- May 2009 — Mullen’s post-judgment motion deemed denied. Ark. R. App. P.–Civ. 4(b).
- June 2009 — Mullen, pro se, filed timely notice of appeal.

Mullen seeks appellate review of the summary judgment. The circuit court’s order resolved many claims. All the Taylors’ claims were dealt with—the court quieted title in them and awarded them damages and attorney’s fees. The judgment also found the property description “sufficient to provide a key to the location of the

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146.01 acres.” This finding seems to torpedo some of JME and Mullen’s claims against Wilcox and Gentry: JME and Mullen challenged the validity of the description in the deed issued by Wilcox, and (as Crawford County Collector) Gentry allegedly provided that description. Those claims thus may have been resolved by the summary judgment. The judgment also dismissed JME and Mullen’s “counterclaim,” which we construe to reach all of Mullen’s claims against the Taylors however denominated. But other claims remain unresolved.

In his third amended counterclaim/third-party complaint, Mullen expanded his claims against the Taylors, Wilcox, and Gentry.

[T]o add additional parties to the suit and additional charges for his Third Amended Counter-Claim/Cross-Claim to Quiet Title and for Malicious Prosecution of a Civil Matter, Conspiracy to Defraud, and for Breach of Contract; Defamation, Slander and Libel, and other relief against the plaintiffs, Mike Taylor and Kristen Taylor, and third[-]party defendants Mark Wilcox, Commissioner of State Lands for the State of Arkansas and Dianna Gentry, County Collector of Crawford County, Arkansas

Mullen further alleged a conspiracy by Wilcox and the Taylors to “maliciously prosecute, defraud, defame, blackmail, and intimidate defendant Thurstle Mullen in an effort to get Mullen to drop his claim to the subject lands.” According to Mullen, he was arrested midway through this case because he allegedly altered the quitclaim deeds.

The summary judgment order did not adjudicate all of these claims. The circuit

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court quieted title in the Taylors and dismissed the counterclaim against them; it did not deal with Mullen's malicious prosecution, conspiracy to defraud, breach of contract, defamation, slander, and libel claims against Wilcox and Gentry. Indeed, neither Wilcox nor Gentry had moved for summary judgment. Wilcox acknowledges that these claims are not presently before us: "Mullen has abandoned any argument or claim that he might have ever had against the Land Commissioner and such supposed claims are not before the Court." Separate Appellee's Brief at 6. Mullen's claims against Wilcox and Gentry are not present on appeal—but this is because at least some of them remain unresolved, not because Mullen abandoned them by appealing. The summary judgment was not final and appealable because of these unresolved claims. *Spill Responders, Inc. v Felts*, 2009 Ark. App. 669. And the record contains no Rule 54(b) certification. We therefore lack jurisdiction. The record does not show service on, or any responsive pleading filed by, Robinson, Price, and Lyon—the so-called fourth-party defendants. If Mullen never served them, then his claims against them would be adjudicated by operation of law in an otherwise final order. Ark. R. Civ. P. 54(b)(5). But these stray defendants do not create the finality problem. Mullen's unresolved claims against Wilcox and Gentry do.

Dismissed without prejudice.